

CONTRACT #4
RFS # 339.01-008

**Department of Mental Health
& Developmental Disabilities**

VENDOR:
Creative Socio-Medics Corp.



STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

CORDELL HULL BUILDING, THIRD FLOOR
425 FIFTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37243

PHIL BREDESEN
GOVERNOR

VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN
COMMISSIONER

January 21, 2005

Mr. James W. White, Executive Director
Fiscal Review Committee
8th Floor Rachel Jackson Building
Nashville, TN 37243

Dear Mr. White:

On April 6, 2004 the Fiscal Review Committee approved a non-competitive contract between the Department of Mental Health and Developmental Disabilities (TDMHDD) and Creative Socio-Medics (CSM), RFS# 339.01-005. This contract provided for the continued maintenance and software application development of the Behavioral Healthcare Information System (BHIS) at the department's five Regional Mental Institutes, with a maximum liability of \$2,908,876. This contract has not been finalized at this time and discussions about the term are being negotiated with OIR, TDMHDD and CSM. We expect the contract to be executed within the next two months.

You may remember that the original contract for these services (FA-98-12926-00) was between the Department of Finance and Administration, Office of Information Resources (OIR), and CSM. Because of specific requirements and specialized knowledge needed to administer this contract, OIR determined that the responsibility for its continuation should be turned over to TDMHDD in May of 2003.

However, (due to a departmental administrative oversight), the request to contract, (RFS 339.01-005), approved by you in April 2004 did not cover the complete time period needed for software maintenance. Further, the length of time it is taking to establish the application development part of the new contract has left the department with an extended period of time without a contract in place. Therefore we are requesting that you approve the establishment of an interim non-competitive contract with CSM to cover the costs of software maintenance until the new contract is in place. This interim contract will enable TDMHDD to pay CSM for maintenance services for the intervening period between the expiration of the F&A contract, June 2003, and the start of the new TDMHDD contract in the next few months.

Let me explain the circumstances that led to this oversight. When the original contract with CSM expired in May of 2003, TDMHDD's Information System Management (ISM) team was in the process of developing the requirements for a major software upgrade for the BHIS system. ISM and CSM mutually agreed that, in order to avoid having two separate contracts and to

Request for Non-Competitive Contract
RFS# 339.01-009
January 21, 2005

maintain continued critical services, it would be in the best interest of all parties to continue with ongoing maintenance services for BHIS until a new contract could be negotiated and put in place. Orally, they agreed that CSM would continue to maintain the support provisions listed in the original F&A contract while the new contract between TDMHDD and CSM was being developed and executed. The TMHDD ISM Director did not realize that this oral agreement was in violation of state purchasing and contract policy.

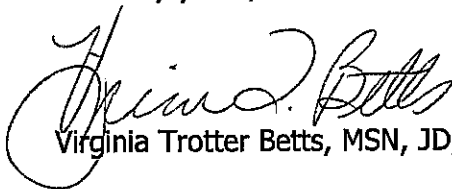
Certainly no one at the department envisioned that we would still be working to finalize the language for a new contract between CSM and TDMHDD twenty months later. However, this is the first contract for a major information system that TDMHDD has ever solely executed. Thus we have worked with great care to ensure that it is written correctly, while at the same time addressing other complex issues such as: (a) ensuring that the new system is HIPAA compliant; (b) an upgrade to the system software; (c) major alternatives in system design; (d) consolidation of hardware from 5 sites to 1 site; and (e) adding a pharmacy component to the system.

I regret our error, and in order to ensure this situation does not occur again, TDMHDD has consolidated the development of all contracts within the department into one contract group within the Budget Section which reports to our Executive Director for Administrative Services, (Assistant Commissioner). This will provide improved oversight as well as a more professional and standardized approach for all future contracting activities. Also, all billings will now be sent directly by vendors to the TDMHDD Fiscal Services Section for payment.

A copy of the contract for continuation of software maintenance services is attached for your review and approval. These rates are based on the same rates as the original F&A contract which expired in May 2003 (#FA-98-12926-00), and CSM has not invoked any late fees, charges or penalties against the State. The total amount of this short-term software maintenance and service contract is \$330,000.

If you have questions please contact Bill Nicks, Director of Information Systems Management at 532-6603 or Mack Rhea, Executive Director of Administrative Services at 532-6662.

Sincerely yours,



Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner

VTB:bn

Enclosure

| FA CONTRACT INFORMATION SUPPLEMENT FOR ALL FA-TYPE CONTRACTS — COMPLETE <u>EITHER</u> SECTION A <u>OR</u> SECTION B | |
|---|---|
| Contract RFS # | RSF-339.01-009 |
| Contractor: | Creative Socio-Medics Corp. |
| SECTION A— CONTRACTOR IS AN INDIVIDUAL | SECTION B— CONTRACTOR IS A COMPANY <i>(e.g., sole proprietorship, partnership, or corporation)</i> |
| Is or has the contractor been a state employee? <input type="checkbox"/> NO <i>(no additional information required)</i> <input type="checkbox"/> YES | Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input checked="" type="checkbox"/> NO <i>(no additional information required)</i> <input type="checkbox"/> YES |
| Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(an approved rule exception permitting a contract within six months of employment is also required)</i> | Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(an approved rule exception permitting a contract within six months of employment is also required)</i> |
| Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i> | Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i> |
| SIGNATURE | |
| <div style="height: 40px; border: 1px solid black;"></div> | |
| SERVICE CONTRACTS COORDINATOR | DATE |

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
Department of Mental Health and Developmental Disabilities
AND
Creative Socio-Medics Corp**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and Creative Socio-Medics Corp, hereinafter referred to as the "Contractor," is for the provision of maintenance of an application computer system, Behavioral Healthcare Information System (BHIS), as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit company. The Contractor's address is:

3500 Sunrise Highway, Suite D-122
Great River, NY 11739

The Contractor's place of incorporation or organization is Delaware.

A. SCOPE OF SERVICES:

The Contractor shall provide software support and maintenance services critical to the function of the Behavioral Healthcare Information System (BHIS) in the areas of patient admission, discharge, and transfer (ADT) as well as patient revenue and billing, Decision Support System and Client Banking at the five (5) Regional Mental Health Institutes (RMHIs) in Tennessee.

These software support and maintenance services shall include but not be limited to the following:

1. The Contractor shall provide BHIS, Decision Support System, Client Banking, and Clinician Workstation Application Support and Maintenance.
2. The Contractor shall provide Cache License support for 256 Concurrent Users.
3. The Contractor shall provide Direct Access (DA) SQL Support and Maintenance.
4. The Contractor shall provide access to the Contractor's State User Association.
5. The Contractor shall implement Change Orders for Customized Application Software Enhancements per the state's request and prior approval of all implementations.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on June 1, 2003 and ending on June 30, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred thirty thousand dollars (\$330,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability

represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

| <u>SERVICE UNIT/MILESTONE</u> | <u>Item</u> | <u>Amount</u> | <u>Total for Period</u> |
|-----------------------------------|---|---------------|-----------------------------|
| Jun., Jul., Aug. 2003 | BHIS, Banking, CWS Application Support | 26,046.00 | |
| | Cache Licenses Support - Cent. Office | 213.00 | |
| | Cache Licenses Support - Facilities | 6,605.00 | |
| | DA SQL Support | 3,090.00 | |
| | Total | | \$35,954.00 |
| Sep., Oct., Nov. 2003 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 213.00 | |
| | Cache Licenses Support - Facilities | 6,605.00 | |
| | DA SQL Support | 3,090.00 | |
| | Change Order: Modify 837 Billing to add unique data for Tenn. (#47057) | 1,700.00 | |
| | Total | | \$38,956.75 |
| Dec. 2003, Jan., Feb. 2004 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 213.00 | |
| | Cache Licenses Support - Facilities | 6,605.00 | |
| | DA SQL Support | 3,243.75 | |
| | Total | | \$37,410.50 |
| Mar., Apr., May 2004 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 213.00 | |
| | Cache Licenses Support - Facilities | 6,605.00 | |
| | DA SQL Support | 3,243.75 | |
| | Change Order: Electronic Medicaid (TennCare) Billing Development & Installation - Version 6 | 12,810.00 | |
| | Change Order: Add Loop 2310D to Medicare Part B Profession 837I EDI claims. | 1,700.00 | |
| | Total | | \$51,920.50 |
| Jun., Jul., Aug. 2004 | BHIS, Banking, CWS Application | 27,348.75 | |

| | | | |
|--|--|-----------|------------------|
| | Support | | |
| | Cache Licenses Support - Cent. Office | 224.00 | |
| | Cache Licenses Support - Facilities | 6,935.00 | |
| | DA SQL Support | 3,243.75 | |
| | Total | | \$37,751.50 |
| Sep., Oct., Nov. 2004 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 224.00 | |
| | Cache Licenses Support - Facilities | 6,935.00 | |
| | DA SQL Support | 3,243.75 | |
| | Total | | \$37,751.50 |
| Dec. 2004, and January and February 2005 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 224.00 | |
| | Cache Licenses Support - Facilities | 6,935.00 | |
| | DA SQL Support | 3,243.75 | \$37,751.50 |
| Jan. through Dec. 2004 | Annual Fee for State User Association | 500.00 | \$500.00 |
| March, April, May 2005 | BHIS, Banking, CWS Application Support | 27,348.75 | |
| | Cache Licenses Support - Cent. Office | 224.00 | |
| | Cache Licenses Support - Facilities | 6,935.00 | |
| | DA SQL Support | 3,243.75 | |
| | Total | | \$37,751.50 |
| June, 2005 | BHIS, Banking, CWS Application Support | 9,116.25 | |
| | Cache Licenses Support - Cent. Office | 74.67 | |
| | Cache Licenses Support - Facilities | 2,311.67 | |
| | DA SQL Support | 1,081.25 | |
| | Total | | \$12,583.84 |
| Total for All Services | | | \$328,332 |

The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest", "Nondiscrimination", "Confidentiality of Records" and "HIPAA Compliance" (sections D.6., D.7., E.11 and E.18). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request,

show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the

parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

William L. Nicks, Director of Information Management Systems
Department of Mental Health and Developmental Disabilities
Andrew Johnson Tower, 12th Floor
710 James Robertson Parkway
Nashville, TN 37243
Phone: 615-532-6603
Fax: 615-615-253-5717
Bill.Nicks@state.tn.us

The Contractor:

James H. Gargiulo, Senior Vice President
Creative Socio-Medics Corp.
3500 Sunrise Highway, Suite D-122
Great River, NY 11739
Fax-631-968-2059
Phone: 1-800-421-7503, ext:2039
jgargiulo@csmc Corp.com

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory

and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken

- (3) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.5. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.6. **Ownership of Materials and Rights to Knowledge Obtained.**
- E.6.a **State Ownership of Work Products.** The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products, but not including application source code or modification made to the Contractors object code, created, designed, or developed for the State under this Contract. The State shall have royalty-free, exclusive, and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.
- E.6.b. **Contractor Proprietary Products.** The Contractor shall retain ownership right, title, and interest in the portions of the Hospital Information System (HIS) Upgrade System that were not developed using State moneys or resources, and that were complete and the property of the Contractor as of the effective date of the Contract (known as "Contractor Proprietary Products"). The following provisions apply:
- i. Contingent upon the State's payment of Software Licensure/System Support fees, the Contractor hereby grants the State a perpetual, royalty-free, irrevocable, unlimited, and non-exclusive right to use the Contractor Proprietary Products for the State's business purposes. The Contractor affirms that Contractor is duly authorized to grant this right.
 - ii. The State shall take all reasonable steps to preserve the confidential and proprietary nature of the Contractor Proprietary Products. The State shall make reasonable efforts not to disclose or disseminate Contractor's proprietary information to any third party that is not an agent of the State.
- E.6.c. **Acquired Knowledge and Skills.** Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and

techniques obtained and used during the course of providing the services requested under this Contract.

- E.6.d. Development of Similar Materials. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

- E.7. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

- E.8. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed without the State's written approval.

- E.11. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.13. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.15. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required

to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.18. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. The Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

Creative Socio-Medics Corp:

James H. Gargiulo, Senior Vice President

Date

Department of Mental Health and Developmental Disabilities:

Virginia Trotter Betts, MSN, JD, RN, FAAN, Commissioner

Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner

Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp, Commissioner

Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury

Date